

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

JEFFREY ROBINSON; DAVID
SURBER; LAURA MORTENSEN;
CHAEJI KIM; LINDSAY MURPHY;
JACLYN KELLEY; BARBARA
OLDENBURGER; and KATHLEEN
NOLAN,

Plaintiffs,

v.

CITY OF SEATTLE; and BALLARD
TERMINAL RAILROAD COMPANY,
LLC,

Defendants.

No.

NOTICE OF REMOVAL

[King County Superior Court No. 22-
2-04125-1 SEA]

TO: CLERK OF THE COURT

AND TO: ALL PLAINTIFFS AND YOUR COUNSEL

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant Ballard Terminal Railroad Company, LLC (“BDTL”) hereby removes to the United States District Court for the Western District of Washington the matter filed in King County Superior Court under Cause No. 22-2-04125-1 SEA, styled *Jeffrey Robinson, et al., v. City of Seattle; and Ballard Terminal Railroad Company, LLC*. See 28 U.S.C. § 1446(a).

1 A true and correct copy of the Summons and Complaint are attached as
2 **Exhibit A** to this Notice of Removal. The state court Complaint was filed on March
3 22, 2022, and was served shortly thereafter. See 28 U.S.C. § 1446(b)(1).

4 **FEDERAL QUESTION**

5 The Complaint provides that Plaintiffs were crossing a railroad track by
6 bicycle, when each rider's respective tire became lodged in the railroad track and
7 caused them to fall and be injured. The stated causes of action are Negligence and
8 Nuisance, under Washington law.

9 District courts shall have original jurisdiction of all civil actions arising
10 under the laws of the United States. 28 U.S.C. § 1331.

11 Normally, a case may not be removed to federal court on the basis of a federal
12 defense, including the defense of preemption. *Hunter v. Philip Morris USA*, 582
13 F.3d 1039, 1042–1043 (9th Cir. 2009). However, an exception is when Congress “so
14 completely preempt[s] a particular area that any civil complaint raising this select
15 group of claims is necessarily federal in character.” *B&S Holdings, LLC v. BNSF*
16 *Ry. Co.*, 889 F.Supp.2d 1252, 1255 (E.D. Wash. 2012) (citing *Metropolitan Life Ins.*
17 *Co. v. Taylor*, 481 U.S. 58, 63–64 (1987)).

18 Under complete preemption, if “the pre-emptive force of a [federal] statute is
19 so ‘extraordinary’ that it ‘converts an ordinary state common-law complaint into
20 one stating a federal claim for purposes of the well-pleaded complaint rule,’” then
21 “any claim purportedly based on that pre-empted state law is considered, from its
22 inception, a federal claim, and therefore arises under federal law.” *B&S Holdings*,
23 889 F.Supp.2d at 1255 (quoting *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393
24 (1987)).

25 “The question in complete preemption analysis is whether Congress
26 intended the federal cause of action to be the exclusive cause of action for the
27

particular claims asserted under state law.” *Id.* at 1256 (quoting *Elam v. Kansas City Southern Ry. Co.*, 635 F.3d 796, 803 (5th Cir. 2011)).

“The Interstate Commerce Act, ch. 104, 24 Stat. 379 (1887), which, as amended, still governs federal regulation of railroads, has been recognized as among the most pervasive and comprehensive of federal regulatory schemes.” *Id.* at 1256 (quoting *City of Auburn v. United States*, 154 F.3d 1025, 1029 (9th Cir.1998)). “For more than a century, the Supreme Court has made it clear that under the U.S. Constitution’s Supremacy Clause (Art. VI, cl. 2), state laws or regulations that are inconsistent with the agency’s plenary authority or with the Congressional policy reflected in the Interstate Commerce Act are preempted.” *Id.*

The Federal Railroad Safety Act provides, in pertinent part:

(a) National Uniformity of Regulation—

(1) Laws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable.

(2) A State may adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), prescribes a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security when the law, regulation, or order—

(A) is necessary to eliminate or reduce an essentially local safety or security hazard;

(B) is not incompatible with a law, regulation, or order of the United States Government; and

(C) does not unreasonably burden interstate commerce.

(b) Clarification Regarding State Law Causes of Action.—

(1) Nothing in this section shall be construed to preempt an action under State law seeking damages for personal injury, death, or property damage alleging that a party—

1 (A) has failed to comply with the Federal standard of care
2 established by a regulation or order issued by the Secretary
3 of Transportation (with respect to railroad safety matters),
4 or the Secretary of Homeland Security (with respect to
5 railroad security matters), covering the subject matter as
6 provided in subsection (a) of this section;

7 (B) has failed to comply with its own plan, rule, or standard
8 that it created pursuant to a regulation or order issued by
9 either of the Secretaries; or

10 (C) has failed to comply with a State law, regulation, or
11 order that is not incompatible with subsection (a)(2).

12 49 U.S.C. § 20106 – Preemption.

13 Thus, the FRSA expressly preempts state and local regulations as to railroad
14 safety, and also preempts state common law tort claims, including negligence. See
15 *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 662 – 664 (1993); *Norfolk Southern*
16 *Ry. Co. v. Shanklin*, 529 U.S. 344 (2000); *Murrell v. Union Pacific R.R. Co.*, 544 F.
17 Supp.2d 1138, 1148 (D. Oregon 2008). Section 20106 will preempt any State law,
18 whether statute or common law, that concerns the same subject matter as the
19 regulations in the rule. *Id.*

20 The Interstate Commerce Commission Termination Act of 1995 (“ICCTA”),
21 49 U.S.C. § 10501 *et seq.*, preempts state regulation and common law claims
22 concerning the “construction, acquisition, operation, abandonment, or
23 discontinuance of spur, industrial, team, switching, or sidetracks or facilities.” *B&S*
24 *Holdings, LLC*, 889 F.Supp.2d at 1259-61 (quoting 49 U.S.C. § 10501(b)(2)).

25 In the present matter, 49 U.S.C. § 20106 and 49 U.S.C. § 10501 completely
26 preempt state common law negligence and nuisance claims pertaining to the
27 design, maintenance, and safety of a rail – pathway crossing, and convert the claim,
28 in effect, to a federal cause of action. See *B&S Holdings, LLC*, 889 F.Supp.2d at
1255-56.

CONSENT TO REMOVAL

Co-defendant City of Seattle consents to this removal.

SERVICE OF NOTICE

Notice of this removal is being filed with King County Superior Court and is being provided to all parties. 28 U.S.C. § 1446(b)(1).

Submitted this 25th day of March, 2022,

KSB LITIGATION, P.S.

By: /s/ WILLIAM C. SCHROEDER

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